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EX PARTE OR LATE FILED

October 28, 1996

William F. Caton, Acting Secretary  
Federal Communications Commission  
Washington, DC 20554

RECEIVED  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Re: **Report of *Ex Parte* Communication**  
**MM Docket No. 87-268**

Dear Mr. Caton:

Pursuant to Section 1.1206(a)(2) of the Commission's Rules, this is to report that on October 25, 1996, Sherwin Grossman, President of the Community Broadcasters Association ("CBA"), delivered opening remarks at a session of the 9th annual CBA convention in Las Vegas, Nevada, where he discussed substantive matters at issue in MM Docket No. 87-268. Because Mass Media Bureau Chief **Roy Stewart** and Assistant Mass Media Bureau Chief **Keith Larson** were in the audience and heard Mr. Grossman's remarks, a copy of the remarks as prepared for delivery is being submitted for inclusion in the *ex parte* file for that rule making proceeding.

Very truly yours,



Peter Tannenwald

Attachments

cc: (w/att) Roy J. Stewart, Esq.  
Mr. Keith Larson

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## **SPEECH FOR CONVENTION**

**LADIES AND GENTLEMEN WELCOME TO THIE 11TH ANNUAL CBA CONVENTION. FIRST OF ALL I WOULD LIKE TO THANK SOME SPECIAL PEOPLE, WITHOUT THEIR HELP WE WOULD BE DEAD IN THE WATER.**

**FIRST OF ALL PETER TANNENWALD, WHO DOES SO MUCH, AND WE OWE SO MUCH TO, WARREN TRUMBLY WHO DOES THINGS LIKE CHAIRMAN OF THIS CONVENTION AND IS MY RESIDENT CRITIC - JUD COLLEY WHOSE EVER THERE, DOUG JENSEN, RON BRUNO, EDDIE OWEN, LENARD WALK, GREG HERMAN, DAVE HANNA, BEN PEREZ, BOB FISHER, BYRON ST CLAIR, WONDERFUL DICK BOGNER, JOHN LUNDIN DOUG WILLIAMS AND OF COURSE MIKE SULLIVAN ON A DAILY BASIS AND LAST OF ALL MY WIFE FOR PUTTING UP WITH ME. PLUS THE SIXTY CONGRESSMAN WHO SIGNED OUR LETTER TO THE FCC.**

**IN JANUARY OF THIS YEAR THE BOARD OF DIRECTORS AND I HAD A LITTLE RETREAT AND STRATEGY MEETING IN MIAMI. AT THAT TIME, WE IDENTIFIED THREE ISSUES THAT WE KNEW WERE CRITICAL TO MUCH OF CBA MEMEBERSHIP: DIGITAL TELVISION TRANSITION, MUST CARRY RIGHTS AND CABLE LEASED ACCESS. WE KNEW WE COULDN'T CONTROL EVENTS ASSOCIATED WITH THESE ISSUES. WE ALSO COULDN'T PREDICT HOW EACH OF THEM WOULD UNFOLD. BUT WE KNEW THEY WERE CENTRAL ISSUES TO THE HEALTH AND LONG TERM SURVIVAL OF COMMUNITY BROADCASTERS.**

**WE ALSO KNEW THESE ISSUES WERE BIGGER THAN WE WERE AS AN ORGANIZATION AND THAT CBA NEEDED HELP. FOR THAT REASON, THE BOARD OF DIRECTORS AGREED TO PUT OUR LONG**

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STANDINGS--PRO BONO COUNSEL PETER TANNENWALD ON A SMALL RETAINER AND ALSO HIRE AN EXECUTIVE DIRECTOR, MIKE SULLIVAN, WHO'S DOING A FANTASTIC JOB AND I'M DAMM PROUD OF HAVING PETER & MIKE. WE ARE EXTREMELY LUCKY TO HAVE THEM. WE STARTED THE YEAR OFF WITH SPECIAL EFFORTS TO MODIFY MUST CARRY RIGHTS. WE WERE ADVISED THAT A STAND ALONE BILL WOULD PROBABLY NEVER SURVIVE THE CONGRESSIONAL PROCESS. WE PREPARED AMENDMENTS THAT ADDRESSED THE MSA AND COUNTY OF LICENSE ISSUES WHICH SO FREQUENTLY BECOME THE IMPEDIMENT TO MUST CARRY RIGHTS. WE LOOKED FOR SUPPPORTERS AND FOUND SOME. WE GOT A SENATE STAFF BRIEFING IN JUNE, WHICH HAD LEGISLATIVE ASSISTANTS FROM 43 SENATE OFFICES IN ATTENDANCE. WE LOOKED FOR LEGISLATIVE VEHICLES AND HAD THE MISFORTUNE THAT NO TELECOMMUNICATION BILLS WERE REPORTED FROM EITHER THE HOUSE OR SENATE COMMERCE COMMITTEES DURING 1996. WE ATTEMPTED TO ATTACH LEGISLATIVE AMENDMENTS TO THE 1997 COMMERCE APPROPRIATION'S BILL. AGAIN WE FOUND SUPPORTERS. ULTIMATELY, HOUSE AND SENATE REPUBLICANS MADE A DECISION THAT THEY WOULD ACCEPT NO LEGISLATIVE RIDERS ON APPROPRIATIONS BILLS. (IT WAS RIDERS IN THE 1996 APPROPRIATIONS BILLS THAT CAUSED THE RECURRING GOVERNMENT SHUT DOWNS, WHICH ULTIMATELY BECAME EMBARRASSMENTS TO THE GOP) HAVING COME UP SHORT WITH THESE OTHERS STRATEGIES, SUCCESS ULTIMATELY TURNED ON

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**GETTING THE SUPPORT OF THE CHAIRMAN OF THE SENATE  
COMMERCE COMMITTEE. AND WE FAILED.**

**AS YOU KNOW THE U.S. SUPREME COURT JUST HEARD ON  
OCTOBER 7, THE CONSTITUTIONAL ARGUMENTS ON MUST CARRY.  
MUST CARRY RIGHTS CONTINUES TO BE A HUGE ISSUE OF MANY OF  
US. BUT NO LEGISLATION WILL MOVE BEFORE THE COURT HANDS  
DOWN ITS DECISION APRIL 1997.**

**WE STARTED OFF THE YEAR WITH LEASED ACCESS. A LOT OF  
PRESSURE WAS PUT ON THE CABLE DEPARTMENT AS I STATED LAST  
YEAR WE WERE ENTERING INTO THE LAW SUIT FOR A WRIT OF  
MANDAMUS. IT WAS HEARD IN FEBRUARY, THE WRIT WAS NOT ISSUED  
BECAUSE THE GOVERNMENT ATTORNEYS SAID THAT IT WAS ON THE  
MARCH AGENDA. WELL THE PROPOSED RULE CAME OUT AND THE  
CABLE INDUSTRY WAS CAUGHT WITH THEIR PANTS DOWN. YOU'VE  
NEVER SEEN SUCH SCREAMINGS AND SCRAMBLING - THEY TOOK  
FCC COMMISSIONERS TO THEIR CONVENTION AND GOT IT PUT ON THE  
BACK BURNER. WE WAITED A REASONABLE TIME, THEN BEGAN OUR  
PUSH.**

**I HAD A LONG SESSION WITH THE COMPLETE CABLE  
DEPARTMENT LAST WEEK AND WE ARE PROMISED IT WILL COME  
OUT IN NOVEMBER. I AM OPTIMISTIC ABOUT GETTING A WORKABLE**

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LEASED ACCESS RULE. I DON'T THINK WE WILL GET AS GOOD A RULE AS WAS PROPOSED BUT I HOPE IT WILL BE USABLE.

THE BIGGEST PROBLEM WE FACE IS ATV, I CAME TO THE CONCLUSION THAT THE ROOT OF OUR PROBLEM LIES IN THE BASIC THESIS THAT WE ARE NOT BROADCASTERS,. IN FACT BECAUSE OF THE SECONDARY STATUS WAS ORIGINALLY INTENDED FOR NTSC FREQUENCY, BECAUSE OF THE NAB, AND THE FCC ITSELF ITS COME TO FEEL ITS SECONDARY TO EVERYTHING. AT THE BIRTH OF LPTV ATV WAS NOT EVEN CONTEMPLATED BY THE TIME LP STATIONS CAME ABOUT NOBODY INVSIONED THE SLAUGHTER OF 100s OF STATIONS LOOSING MANY MILLIONS OF \$ IN INVESTMENTS AND THOUSAND OF FAMILIES BEING PUT OUT OF WORK. IT IS BEING DONE IN A COLDLESS, RUTHLESS MANNER THAT CAN BE INVSIONED.

TO CHANGE THIS PHILOSOPHY WE ARE AND DID THE FOLLOWING:

I APPOINTED A TECHNICAL COMMITTEE MADE UP OF BOB FISHER, KEVIN FISHER, BYRON ST. CLAIR, DICK BOGNER, JOHN LUNDIN, PIERRE JASPAR TO COME WITH NEW STANDARDS. (THRU TEST, DONE BY DICK BOGNER IN NEW YORK) WE WISH TO BE MORE REALISTIC IN THIS AGE OF SPECTRUM SCARCITY. WE WANT TO ALLOW LPTV STATIONS TO INCREASE THEIR POWER TO MAINTAIN 15 dB WITH RELATIONSHIP TO FULL SERVICE STATIONS IN

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THEIR BROADCASTING AREA. THIS SOLUTION HAS THE EFFECT OF MAKING MANY ADJACENT CHANNELS AVAILABLE TO LPTV. ALLOW DISPLACED LPTV TO RELOCATE TO THE CURRENT OSCILLATOR AND INTERMODULATION CHANNELS AT THEIR OWN RISK. THE RISK ALSO MEANS THAT IF WE BECOME A SOURCE OF INTERFERENCE THEN WE WOULD HAVE TO CHANGE TO ELIMINATE THE INTERFERENCE. BECAUSE IF THE ADMINISTRATION IS SERIOUS ABOUT HELPING THEY WILL HAVE TO RELAX THE TABOOS RESTRICTIONS IN ORDER SO WE CAN FIND MORE SPECTRUM. THE COMMISSION SHOULD DISCONTINUE ITS ZERO TOLERANCE POLICY FOR LPTV AND WE ARE ASKING THAT THEY APPLY THE SAME POLICY AS FULL POWER TV NOTHING MORE NOTHING LESS.

LET'S FACE IT IN THE FINAL ANALYSIS, INTERFERENCE IS AN ISSUE BETWEEN HOUSEHOLD VIEWERS AND NOT AN ISSUE BETWEEN LPTV AND FULL POWER BROADCASTERS.

WE HAVE OBTAINED THE NECESSARY SOFTWARE, RETAINED CRAIG NORWOOD WHO KNOWS FORTRAN (THE COMPUTER LANGUAGE THAT THE FCC USED) TO DO OUR OWN ALLOCATION WORK.

WE HAVE PEOPLE IN DESIGNATED STATES TO MAKE SURE WE HAVE ALL THE LPTV OPERATING STATIONS SO WE CAN DO ALLOCATIONS. THE FCC RECOGNIZES THAT THERE ARE HUNDREDS OF SERIOUS LPTV BROADCASTERS WHO PROVIDE AN IMPORTANT COMMUNITY SERVICE IN THE LOCAL, ETHNIC AREAS THAT ARE NOT BEING SERVED BY FULL POWER BROADCASTERS. THEY RECOGNIZE

OUR DEVERSITY OF OWNERSHIP. OUR BUSINESS CLIMATE FOR THE  
 LPTV BROADCASTERS IS BEING DESTROYED IN THE DTV RULE  
 MAKING SECONDARY STATUS HAS EVOLVE INTO A PRACTICE  
 WHEREBY THE GOV'T IS FREE TO PLACE ANY PUBLIC POLICY  
 OBJECTIVE THAT IT WANTS TO PERSUE AHEAD OF ANY LPTV.  
 BORADCASTERS RIGHTS OF HER/HIS AUTHORIZED AND LICENSED  
 SPECTRUM.

ANOTHER COMMITTEE MADE UP OF RON BRUNO, EDDIE  
 OWEN, DOUG JENSEN, BEN PEREZ WHO MET WITH ME IN MIAMI, TO  
 DESIGN A NEW TYPE STATION SUCH AS IS IN FM WITH PRIMARY  
 STATUS EXCEPT WITH LIMITED POWER.

STAY	NEW CLASS STATION	LEGAL
ON AIR	NEW APPLICATION	HAVE STUDIO
CONV/DIGITAL	PRIMARY STATUS	NEW APPLICATION
	INCLUDED POWER ERP	EVERYONE NEEDS
	ANALOG-TO-DIGITAL CONV	TO APPLY
	MUST CARRY	PRIMARY \$2500.
	LOCAL LP PRIORITY OVER	SECOND \$1000.
	OUT OF TOWN FULL POWER	
	NO LP DESIGNATION	

BASIC RULES OF ARTICLES 73

FREE POLITICAL TIME -

CHILDRENS PROGRAMS - NEW CHANNEL ALLOCATION W/BE FOUND IF  
 POSSIBLE.

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**MUST HAVE  
3 HRS/WK CHILDREN'S PROGRAM  
2 FULL/TIME EMPLOYEES/STUDIO  
PUBLIC INSPECTION FILE  
VERIFICATION IF ON AIR!!!**

**WE HAVE ALL HEARD THAT THE WHITE HOUSE WANTS TO AUCTION OFF CHANNEL 60 THRU 69 AND I KNOW WE CAN NOT GET HELP OR SATISFACTION FROM CHAIRMAN HUNDT. WE NEED A BASIC CHANGE IN THE PHILOSOPHY OF GOVERNMENT. SO MIKE SULLIVAN, PETER TANNENWALD, EDDIE OWEN AND MYSELF MET WITH THE CHIEF DOMESTIC POLICY ADVISOR MR. GREGORY C. SIMON - AT THE WHITE HOUSE, WHAT WAS TO BE A HALF HOUR PRESENTATION TURNED INTO AN HOUR. MR. SIMON, WAS VERY GRACIOUS, KNOWLEDGABLE AND I THINK MORE ACCESSIBLE THAN THE CHAIRMAN REED HUNDT. IT WAS AN HONOR TO PRESENT OUR CASE WE USED IN OUR PRESENTATION, STATIONS LIKE WATCH-TV GREG HERMAN IN PORTLAND, OREGON, J. DOUGLAS WILLIAMS , IN WOODWARD, OKLAHOMA, EDDIE OWEN IN HOPEKINSVILLE, KY. AND WJAN IN MIAMI.**

**WE CAME AWAY VERY OPTIMISTIC.!!!**



**LAST MARCH THE SMALL BUSINESS REGULATORY  
ENFORCEMENT FAIRNESS ACT OF 1996 WAS PASSED AND BECAME  
LAW. THIS HOLDS THE FCC RESPONSIBLE FOR WHAT THEY DO TO US  
AND NOW THEY CAN BE SUED - WE ARE APPOINTING A COMMITTEE  
TO BE HEADED BY WARREN TRUMBLY THAT IF WE ARE GOING TO  
GET KILLED WE WILL HAVE A REAL CLASS ACTION SUIT OF  
HUNDREDS AND HUNDREDS OF MILLIONS OF DOLLARS AND AS YOU  
KNOW I'M ONE STUBBORN SOB.!**

**IN CLOSING I WOULD LIKE TO QUOTE A POEM THAT MY OLD  
HIGH SCHOOL PRINCIPAL USED TO GIVE TO US AT EVERY ASSEMBLY  
I NEVER FORGOT IT AND IT CERTAINLY IS TRUE TODAY.....**

**IT COULDN'T BE DONE**

**SOMEBODY SAID THAT IT COULDN'T BE DONE**

**BUT HE WITH A CHUCKLE REPLIED**

**THAT "MAYBE IT COULDN'T," BUT HE WOULD BE ONE**

**WHO WOULDN'T SAY SO TILL HE'D TRIED,**

**SO HE BUCKLED RIGHT IN WITH THE TRACE OF A GRIN**

**ON HIS FACE. IF HE WORRIED, HE HID IT.**

**HE STARTED TO SING AS HER TACKLED THE THING**

**THAT COULDN'T BE DONE AND HE DID IT.**

**THERE ARE THOUSANDS TO TELL YOU IT CANNOT BE DONE,**

**THERE ARE THOUSANDS TO PROPHECY FAILURE;**

**THERE ARE THOUSANDS to POINT OUT TO YOU, ONE BY ONE,**

**THE DANGERS THAT WAIT TO ASSAIL YOU.**

**BUT JUST BUCKLE IN WITH A BIT OF A GRIN,**

**JUST TAKE OFF YOUR COAT AND GO TO IT;**

**JUST START TO SING AS YOU TACKLE THE THING**

**THAT "CANNOT BE DONE" AND WE WILL DO IT!**